

REMARKS

Claims 12-22 have been canceled without prejudice or disclaimer. Applicants reserve the right to file one or more continuation or divisional applications directed to the canceled subject matter. New claims 23-32 have been added. Basis for the recitation "which maintains at least one viable organism as a viable organism throughout a sampling period and a subsequent incubation period" in claims 23, 29, and 31, can be found, for example, in paragraph [0036]. No new matter has been added. Entry and consideration are respectfully requested.

The rejection of claims 12-16 and 18-22, as it now pertains to new claims 23-27 and 28-32 under 35 USC 102(b) as being anticipated by Mitchell et al is respectfully traversed.

Applicants submit that Mitchell et al. fail to teach an electrostatic sampling device wherein said device generates a sufficient electrostatic charge to capture at least one viable organism on a grounded, conductive collection surface which maintains at least one viable organism as a viable organism throughout a sampling period and a subsequent incubation period and wherein said electrostatic field generates a sufficient electrostatic charge which permits capture of viable organisms which remain viable throughout a sampling period and a subsequent incubation period. Mitchell et al teach an electrostatic space charge system which has a ground plane which causes power requirements for the battery-powered high voltage supplies to be excessive since the closer a ground plane is brought to the discharge electrodes, the higher the load on the power supply. Furthermore, the system of Mitchell et al uses operating voltages in the range of about -15,000 dc to about -30,000 dc which are levels known to be lethal to airborne and surface bacteria (See Arnold et al., J. Appl. Poult. Res, 179-186, 2002; enclosed and

Seo et al., J. of Food Prot., Volume 64(1), abstract; previously submitted).

The Federal Circuit states that the anticipation determination is viewed from one of ordinary skill in the art and that there must be no difference between the claimed invention and the reference disclosure as viewed by a person of ordinary skill in the field of the invention, *Scripps Clinic & Research Foundation v. Genentech Inc.*, 927 F. 2d 1565, 18 USPQ2d 1001, 1010, (Fed. Cir. 1991). Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration. It is not enough, however, that the reference disclose all the claimed elements in isolation.

The rejection is improper.

Applicants respectfully request withdrawal of the instant rejection.

The rejection of claim 17, as it now pertains to new claims 23-32, under 35 USC 103(a) as being unpatentable over Mitchell et al in view of Spurrell is respectfully traversed.

Applicants respectfully submit that the combination of Mitchell et al. in view of Spurrell fails to render the instantly claimed *prima facie* obvious. (1) Mitchell et al. fails to teach a device which generates a sufficient electrostatic charge which permits capture of viable organisms which remain viable throughout a sampling period and a subsequent incubation period, and (2) Mitchell also fails to teach a method for collecting airborne particulates which includes at least the step of collecting at least one viable organism in or on a grounded, conductive material which maintains said at least one viable

organism throughout a sampling period and a subsequent incubation period. Furthermore, the system of Mitchell et al uses operating voltages in the range of about -15,000 dc to about -30,000 dc which are levels known to be lethal to airborne and surface bacteria (See Arnold et al., J. Appl. Poult. Res, 179-186, 2002; enclosed and Seo et al., J. of Food Prot., Volume 64(1), abstract; previously submitted).

Mitchell taken with Spruill fails to render the instantly claimed invention *prima facie* obvious since Spruill et al fails to cure the deficiencies of Mitchell since Spruill teaches the use of the last stage of an Andersen impactor which is not an electrostatic sampling device. Mitchell taken with Spruill teaches an electrostatic device which uses operating voltages in the range of about -15,000 dc to about -30,000 dc which are levels known to be lethal to airborne and surface bacteria with a pathogen dish containing either a growth or an inhibitor media that collects the particulates. However, the device of the combination of references would collect non-viable organisms which teaches away from the instantly claimed invention. Therefore, Spruill fails to cure the deficiencies of the Mitchell reference. The combination of Mitchell taken with Spruill clearly fails to render the instantly claimed invention *prima facie* obvious. Applicants respectfully request withdrawal of the instant rejection.

It is believed that all of the claims are in condition for allowance. Accordingly, it is respectfully requested that the instant application be allowed to issue. If any issues remain to be resolved, the Examiner is invited to telephone the undersigned at the number below.

In the event this paper is deemed not timely filed, the undersigned hereby petitions for an appropriate extension of time. Please charge any fees, which may be required by this paper or at any time during prosecution of the instant application, or credit any overpayment, to deposit account 50-2134.

Respectfully Submitted,

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DATE

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CERTIFICATE OF FILING VIA FACSIMILE

The undersigned hereby certifies that the attached **AMENDMENT AFTER FINAL REJECTION and NOTICE OF APPEAL**, was this day, October 19, 2005 filed in the United States Patent and Trademark Office via facsimile to facsimile number (571) 273-8300. Total Pages: 11

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